

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 05-04-10
Rule ID(s): 4714
File Date: 05/11/2010
Effective Date: 10/29/2010

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Medical Services
Contact Person:	Kim Beals
Address:	Office of General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street Nashville, Tennessee
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-03-03	Technical and Financial Eligibility Requirements for Medicaid
Rule Number	Rule Title
1240-03-03-.03	Resource Limitations for Categorically Needy

Chapter Number	Chapter Title
Rule Number	Rule Title

Chapter 1240-03-03
Technical and Financial Eligibility Requirements for Medicaid

Amendments

Rule 1240-03-03-.03, Resource Limitations for Categorically Needy, is amended by deleting part 4 from subparagraph (f) of paragraph (9) in the rule in process that will become effective March 7, 2010, and renumbering subsequent parts accordingly so that subparagraph (f) shall read as follows:

- (f) Allocation of Additional Resources to the Community Spouse.
1. Additional resources may be allocated to the community spouse through the administrative appeals process, in accordance with the criteria specified below, in order to make up any shortfall between the allocation of income as specified in 1240-03-03-.04 and either the standard maintenance amount (SMA) or the maximum monthly income allowance (MMIA), as deemed appropriate.
 2. The amount of additional resources that are necessary to cover the shortfall in the SMA or MMIA shall be determined in reference to the purchase of a single premium annuity as follows:
 - (i) By calculating the shortfall in the SMA or MMIA and determining the amount of additional resources that must be invested in a single premium annuity in order to generate the income necessary to cover the shortfall.
 - (ii) The amount of resources needed to cover the shortfall shall be determined in reference to an annuity calculator as adopted by the Department in its TennCare / Medicaid Policy Manual.
 3. The additional allocation of resources to the community spouse does not require the actual purchase of the single premium annuity that is used for purposes of calculating the amount of the additional resource allocation.
 4. If a single premium annuity is actually purchased pursuant to these rules, the annuity must comply with all other relevant requirements of state and federal law.
 5. The amount of additional resources that are necessary to cover the shortfall in the SMA or MMIA shall not be determined in reference to any investment which contemplates the return of the entire principal at maturity.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105(11) and (12), 71-5-102, 71-5-106, 71-5-111, and 71-5-121; 26 U.S.C. §§ 408 and 408A, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396d(p) and (s), 42 U.S.C. § 1396p, 42 U.S.C. § 1396p(c)(1)(A), (B), (C), (D), (E), (E)(iv), (F), (G), (H), (I) and (J), 42 U.S.C. § 1396p(c)(2)(D), 42 U.S.C. § 1396p(d)(4)(B), 42 U.S.C. § 1396p(d)(5) and 42 U.S.C. § 1396p(e)(1),(2),(3) and (4), 42 U.S.C. § 1396p(f)(1), (2), (3) and (4), 42 U.S.C. § 1396p(g), 42 U.S.C. § 1396r-5(b), (c), (d), (f) and (g), and 42 U.S.C. § 1396r-5(d)(6) and (e); 20 C.F.R. §§ 416.1205(c), 416.1212, 416.1220, 416.1222 and 416.1224; 42 C.F.R. § 435.601 and 435.602, 42 C.F.R. §§ 435.700, 435.721(b), 435.725, 435.735, 435.831, 435.832, 435.840, 435.845, and 435.914 (b) and (c); 45 C.F.R. § 233.20; PL 97-248, PL 98-369 § 2611, PL 99-509 § 9401(a)(3), PL 100-93 § 9; PL 101-239 Omnibus Reconciliation Act (OBRA) 1989 § 8014 and OBRA 1993, PL 104-193, and PL 109-171 §§ 6011, 6012, 6013, 6014, 6015, and

6016.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Human Services on 01/25/2010, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 1/25/10

Signature: SK Beals

Name of Officer: Kim Beals

Deputy General Counsel

Title of Officer: Department of Human Services

Subscribed and sworn to before me on: January 25, 2010

Notary Public Signature: Regina D. Mitchell

My commission expires on: May 8, 2012

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr

Robert E. Cooper, Jr.

Attorney General and Reporter

5-10-10

Date

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Filed with the Department of State on: 5/16/10

Effective on: 10/21/10

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

State Rule 1240-03-03-.03 "Limitations to the Categorically Needy" was recently amended to add a new rule to address the process to be used for allocating additional resources to the community spouse through the administrative appeals process, in accordance with the criteria specified below, in order to make up any shortfall between the allocation of income as specified in 1240-03-03-.04 and either the standard maintenance amount (SMA) or the maximum monthly income allowance (MMIA), as deemed appropriate. These proposed rules make a change in the amount of resources that can be allocated to the community spouse pursuant to a recently issued federal court order.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The current rule disallows consideration of the resources allocated to the community spouse by federal law when calculating the amount of additional resources that may be needed to address the community spouse's income shortfall. A recently issued federal court order held that the statutorily allocated resources can and should be used to provide additional income to the community spouse, thus making this provision in the current rules unenforceable and requiring this modification.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The agencies that may be affected by this rule are the Nursing home Association and the Department of Finance and Administration (Bureau of TennCare).

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Fiscal Impact will be minimal as the appeal process to make a determination on additional allocation of resources already exists. The only change to be implemented by this rule is specifying the process to be used for the allocation.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Marcia Garner, Director, Medicaid/TennCare Policy
Tennessee Department of Human Services
Citizens Plaza Bldg., 12th Floor
400 Deaderick Street
Nashville, TN 37243
(615) 313-5465

Marla Taylor, Program Manager, Medicaid/TennCare Policy
Tennessee Department of Human Services
Citizens Plaza Bldg., 12th Floor

400 Deaderick Street
Nashville, TN 37243
(615) 313-4873

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

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400 Deaderick Street
Nashville, Tennessee 37243
(615) 313-4731

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A